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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	MM Docket No. 93-13
)	
Amendment of Section 73.202(b))	RM-8156
Table of Allotments,)	RM-8234
FM Broadcast Stations)	
(Blanchard, Louisiana and)	
Stephens, Arkansas).)	

To the Commission:

REPLY

COMES NOW Arkansas Wireless Company (Wireless) which submits this Reply to the Daryl L. Bordelon (Bordelon) Opposition to Wireless' Application for Review in this matter.

On November 3, 1993 Wireless filed its Application for Review of the Commission's decision to allocate Channel 271C3 to Blanchard, Louisiana.¹ Wireless pointed out that the decision of the Commission was based exclusively on a small difference in population between the communities of Blanchard, Louisiana and Stephens, Arkansas. The respective populations are 1,175 and 1,137 according to the 1990 Census, a difference of 38 persons.

The Commission, by delegated authority, stated that it found both communities "well served" by radio services and that

¹ Report and Order released September 29, 1993, 58 F.R. 51787 (October 5, 1993).

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population was the only "distinguishable factor" between the communities and thus the staff determined to make the decision on population alone.

Wireless alleged that by drawing the conclusion that both communities were equivalent regarding radio reception services, the staff ignored its own technical findings that Blanchard received 34 aural signals but Stephens received only 17 aural signals. Additionally, the staff determined that Stephens receives no night time AM signal, but Blanchard does. Although the staff never defined what it meant by "well served" in this Rulemaking proceeding and never cited law or precedent for its application of this term of art, these service levels are certainly "distinguishable."

Wireless presented evidence from official publications of the Department of Commerce acknowledging that the 1990 Census significantly undercounted blacks and other minorities. Stephens has a minority population of about 40% according to the Census and it only stands to reason that with the effects of the undercount, Stephen's population approaches or exceeds that of Blanchard.

Wireless pointed out that given this very small difference in population, it might be impossible for the Commission to make its reasoned analysis on population grounds alone. Wireless contended that there had never been a Commission case where the determination between communities competing for an allocation was

such a small population differential.² In addition to being a very small population difference, the disparity is only about 3% of the population figures considered.

Wireless contends that given the closeness of the population count, and the fact that the 1990 Census was acknowledged by the Department of Commerce as having significant inaccuracies in undercounting minority populations, that the Commission is obligated to consider other factors before making its determination on allocation of a new FM service.

Wireless suggested considering the nature of the populations of the communities and the locations of the each community in proximity to other communities. Stephens is a rural community with a black population of over 400 persons out of its 1,137. Blanchard is an affluent white, bedroom community of Shreveport, Louisiana.

Wireless further suggested that the Commission may wish to consider other media opportunities available to residents of each communities. Blanchard is in the Shreveport MSA and has access to, and coverage in, Shreveport's daily newspaper and on Shreveport's VHF television stations. No such comparable opportunities are available to Stephens, Arkansas.

Wireless alleged that the Commission has never dealt with a case where the facts are as they are here. Bordelon did not

² Bordelon did not disagree with this allegation in his Opposition and as a result, it may be presumed to be correct.

disagree with this contention but maintained that the Commission must adhere to its past case precedents and use Census population count even if it is acknowledged that the population count is inaccurate.

The Commission has certainly found population differences to be a determinant for allocation in the past, but never a difference 38 people. The Commission has further found small percentage population differences to be grounds for determining an allocation, but again these facts exceed all reported cases and force the bureau staff make novel legal determinations.

Bordelon has seen fit to ignore most of Wireless's arguments concerning the fact that, given the similarities between the two communities and the closeness in the population count, additional analysis is really needed for the Commission to arrive at a reasoned Rulemaking analysis. Bordelon obviously understands the necessity for the Commission to consider additional factors to make this allocation because he suggests some other factors for the Commission to use to compare the communities. He states that the allocation to Blanchard would serve a greater number of minority persons than would the allocation to Stephens.³ His suggestions further emphasize the disparity between the communities and demonstrate that the Report and Order did not consider all the relevant information.


³ Opposition at P. 5 and associated exhibits.

Wireless will not respond to Bordelon's contentions except to say that it would be very helpful for the Commission to give a Petitioner and commenting parties an appropriate framework of tests which they might use in a very close case between two equally deserving communities.

WHEREFORE Arkansas Wireless Company requests the Commission review the Report and Order in this Rulemaking and allocate Channel 271A to Stephens, Arkansas, or in the alternative, order a Further Notice of Proposed Rulemaking to determine additional information necessary for its findings in these matters.

Respectfully submitted,

ARKANSAS WIRELESS COMPANY

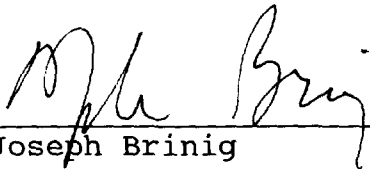
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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 1993, a true copy of the foregoing Reply was sent first class, postage pre-paid to Daryl Bordelon, 6036 Dillingham Drive, Shreveport, Louisiana 71106.



F. Joseph Brinig